

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO: 1:17-CR-176

TIRRELL PERRY THOMAS,

Defendant.

* * * *

CHANGE OF PLEA HEARING

* * * *

BEFORE: THE HONORABLE ELLEN S. CARMODY
United States Magistrate Judge
Grand Rapids, Michigan
December 1, 2017

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFF:

KATE ZELL
Assistant United States Attorney
P.O. Box 208
Grand Rapids, Michigan 49501-0208

APPEARING ON BEHALF OF THE DEFENDANT:

HELEN C. NIEUWENHUIS
Federal Public Defender
50 Louis Street, N.W., Suite 300
Grand Rapids, Michigan 49503-2633

1 Grand Rapids, Michigan

2 December 1, 2017

3 at approximately 3:02 p.m.

4 PROCEEDINGS

10:34:13 5 COURT CLERK: Court calls Case 1:17-CR-176; USA vs.
6 Tirrell Perry Thomas.

7 THE COURT: Good afternoon. Would counsel please
8 put your appearances on the record.

9 MS. ZELL: Good afternoon, your Honor. Kate Zell
11:06:22 10 for the United States.

11 THE COURT: Good afternoon.

12 MS. NIEUWENHUIS: And Helen Nieuwenhuis on behalf
13 of Mr. Thomas, who is here as well.

14 THE COURT: Good afternoon, Miss Nieuwenhuis, and
11:06:34 15 good afternoon to you, Mr. Thomas.

16 And it's nice to see you. You don't have the boot
17 anymore.

18 MS. NIEUWENHUIS: That is correct.

19 THE COURT: When did you get out of the boot?

11:06:56 20 MS. NIEUWENHUIS: Oh, quite awhile ago.

21 THE COURT: Okay. Maybe I've seen you since.

22 MS. NIEUWENHUIS: Oh, yep.

23 THE COURT: Miss Nieuwenhuis, I have been advised
24 that your client, Mr. Thomas, intends to enter a plea of
11:07:11 25 guilty today, to which count of the Indictment?

1 MS. NIEUWENHUIS: One and three.

2 MS. ZELL: One and three, your Honor.

3 THE COURT: Okay. All right. One and three.

4 MS. NIEUWENHUIS: Uh-huh.

11:07:27 5 THE COURT: And pursuant to a plea agreement; is
6 that correct?

7 MS. NIEUWENHUIS: That is correct, your Honor.

8 MS. ZELL: Yep.

9 THE COURT: And Mr. Thomas, I'm going to talk to
11:07:37 10 you about your rights in some detail. I'll be talking to
11 you about what the charges are you intend to plead guilty to
12 today, and what the penalties for those could be. And the
13 first thing I want to remind you is you do have the right to
14 remain silent. You do not have to say anything to anyone
11:07:59 15 about the charges against you, you don't have to say
16 anything to me, you don't have to say anything to anyone
17 from law enforcement or anyone else. However, if you enter
18 a guilty plea, you'll be giving up that right, because I
19 have to do what is called establish a fact basis for your
11:08:21 20 plea. So I will need to ask you what you did that makes you
21 guilty. Understood, sir?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Are you willing to give up your right
24 to remain silent for purposes of entering a guilty plea to
11:08:36 25 Counts One and Three of the Indictment?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. If you would kindly stand
3 and raise your right hand, my deputy clerk will put you
4 under oath.

11:08:57 5 TIRRELL PERRY THOMAS - DEFENDANT - SWORN

6 THE COURT: All right. Mr. Thomas, because you are
7 under oath, if you say anything that you know is false
8 during this hearing and it's important, that could subject
9 you to penalties for perjury. Understood?

11:09:13 10 THE DEFENDANT: Yes.

11 THE COURT: All right. Now, is your full name, in
12 fact, Tirrell Perry Thomas?

13 THE DEFENDANT: Yes.

14 THE COURT: Is it spelled correctly in the
11:09:24 15 Indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: And how old are you, sir?

18 THE DEFENDANT: Thirty-eight.

19 THE COURT: Okay. And how far did you get in
11:09:33 20 school?

21 THE DEFENDANT: GED.

22 THE COURT: All right. Able to read, write, and
23 understand English okay?

24 THE DEFENDANT: Yes.

11:09:39 25 THE COURT: Okay. You do have the right to have a

1 United States district judge conduct your case -- or conduct
2 this hearing, and the district judge assigned to your case
3 is the Honorable Paul Maloney. And a district judge is a
4 judge who has been appointed under our United States
11:10:02 5 Constitution for life.

6 I am a magistrate judge, and I have been appointed
7 for a term of years under a federal statute. I will be
8 making a report and recommendation to Judge Maloney as to
9 whether or not to accept your plea, but you are entitled to
11:10:22 10 have him conduct this hearing, unless you freely choose or
11 consent to my doing so. Do you understand that, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you so consent?

14 THE DEFENDANT: Yes.

11:10:33 15 THE COURT: Miss Nieuwenhuis, did you both read and
16 sign the consent form?

17 MS. NIEUWENHUIS: We did, your Honor, yes.

18 THE COURT: All right. Now, is there anything
19 wrong with you today, Mr. Thomas, either physically or
11:10:49 20 mentally that would make it difficult for you to follow what
21 is going on here?

22 THE DEFENDANT: No.

23 THE COURT: Have you had any prescription
24 medication or any other substance in the last 24 hours that
11:11:02 25 would make you sleepy, dizzy, drowsy, confused, anything

1 like that?

2 THE DEFENDANT: No.

3 THE COURT: And have you been given a copy of the
4 Indictment against you?

11:11:15 5 THE DEFENDANT: Yes.

6 THE COURT: Have you had the chance to read that
7 and discuss that with your attorney, Miss Nieuwenhuis?

8 THE DEFENDANT: Yes.

9 THE COURT: Will he waive the reading if I
11:11:24 10 summarize the crimes for him and the elements of Counts One
11 and Three?

12 MS. NIEUWENHUIS: He will, your Honor.

13 THE COURT: All right.

14 Mr. Thomas, Count One charges you with a conspiracy
11:11:39 15 to commit bank fraud. And the government would have to
16 prove each of the following beyond a reasonable doubt to
17 prove you guilty of that crime.

18 First, that you agreed with at least one other
19 person to execute a scheme to obtain by means of material
11:12:05 20 false pretenses and representations money that was owned by
21 or under the custody and control of the Bank of America.
22 And second, that you knowingly and voluntarily joined the
23 conspiracy.

24 Count Three charges you with one count of actual
11:12:32 25 bank fraud, and to prove you guilty of that count, the

1 government would have to prove each of the following beyond
2 a reasonable doubt:

3 That you knowingly executed or attempted to execute
4 a scheme to obtain money owned or by-- by or in the control
11:12:57 5 of a financial institution by means of false or fraudulent
6 pretenses, representations, or promises.

7 Second, that the scheme included a material
8 misrepresentation or concealment of a material fact. Third,
9 that you had the intent to defraud.

11:13:20 10 And fourth, that the financial institution was
11 federally insured.

12 This is puzzling to me in the plea agreement.

13 MS. ZELL: I apologize. It should actually say of
14 Count Three, if he aided and abetted.

11:13:44 15 THE COURT: Okay. Do you want to amend that or?

16 MS. ZELL: No, Section 2 was alleged as well, so
17 Section 2 applies to both, but helping others execute the
18 actual withdrawal of money, so the conspiracy.

19 THE COURT: Okay.

11:14:09 20 MS. ZELL: Yes. So if he drove someone to a
21 casino, but they actually committed the withdrawal.

22 THE COURT: Okay. That should be Count Three then?

23 MS. ZELL: Yes, exactly. Sorry, it should say
24 Count Three right there. And my apologies.

11:14:24 25 THE COURT: That's all right. I just was a little

1 puzzled.

2 You could also be guilty of Count Three, if you
3 aided and abetted. What that means is intentionally helped
4 or encouraged another person to commit the crime of bank
11:14:41 5 fraud. So and the penalties on these charges, I think they
6 are both exactly the same, let me see.

7 MS. ZELL: That is correct.

8 THE COURT: On Count one, the conspiracy to commit
9 bank fraud, the maximum penalty is not more than 30 years in
11:15:07 10 prison and/or up to a \$1 million fine. Supervised release
11 of not more than five years.

12 Supervised release is a period of time after you
13 would be released from custody when you would still have to
14 follow certain rules set out by the Court. And if you
11:15:28 15 failed to follow those rules, you could be returned to
16 custody for up to your entire term of supervised release.
17 There is also a special assessment of \$100, and mandatory
18 restitution is required.

19 Do you have an estimate on that, Miss Zell.

11:15:54 20 MS. ZELL: Yes, Paragraph 4 of the plea agreement.
21 the parties presently believe that the restitution amount is
22 approximately \$209,000 -- \$209,361.72.

23 THE COURT: All right. And Count Three the maximum
24 penalty is exactly the same as for Count One.

11:16:24 25 Now, I don't want you to say anything about the

1 charge at this time, but I do want to know, do you think you
2 understand what you've been charged with?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you think you understand what
11:16:37 5 the penalties for those counts could be?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Now, you also are entitled
8 to have an attorney represent you at every stage of this
9 proceeding against you. You were free to hire your own
11:16:55 10 attorney, however, you did--

11 Were you retained or appointed?

12 MS. NIEUWENHUIS: I was appointed, your Honor, yes.

13 THE COURT: All right. You qualified financially
14 when you requested court-appointed counsel, and Miss
11:17:11 15 Nieuwenhuis was appointed to represent you at no charge to
16 you.

17 I was thinking back to your private practice days,
18 sometimes you were retained and sometimes you were
19 appointed.

11:17:25 20 MS. NIEUWENHUIS: That's right.

21 THE COURT: Have you had the chance to talk with
22 Miss Nieuwenhuis thoroughly about the charges against you
23 and your decision to plead guilty today and what your other
24 choices might be?

11:17:41 25 THE DEFENDANT: Yes.

1 THE COURT: And have you had the chance to ask her
2 any questions you've had about any of those things?

3 THE DEFENDANT: Yes.

4 THE COURT: Has he-- Has she answered those
11:17:52 5 questions to your satisfaction?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you generally been satisfied with
8 her services to date?

9 THE DEFENDANT: Yes.

11:18:01 10 THE COURT: Has she had the chance to talk with you
11 about the sentencing guidelines and how those might apply to
12 your case?

13 THE DEFENDANT: Yes.

14 THE COURT: And Miss Nieuwenhuis has worked for
11:18:15 15 many years with our sentencing guidelines and she can make
16 what I would call an educated guess about what your
17 guideline range might be, but do you understand that she
18 does not know that for certain, nor does Miss Zell, nor do
19 I?

11:18:33 20 THE DEFENDANT: Yes.

21 THE COURT: Okay. And that will require the
22 preparation of a presentence report. Do you understand
23 that?

24 THE DEFENDANT: Yes.

11:18:41 25 THE COURT: And Judge Maloney will be guided by the

1 guidelines, he is not bound by them. And once your
2 presentence report has been prepared, Judge Maloney -- you
3 can file objections, you and the government both, about
4 anything that you think in the report that is wrong or
11:19:06 5 inaccurate. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, after it's been determined what
8 guideline applies to your case after Judge Maloney has
9 resolved any objections, if there is any objections-- are
11:19:25 10 any objections, under some circumstances, you and the
11 government would have the right to appeal any sentence that
12 is imposed; is that correct? Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Miss Zell, has he given up some of
11:19:44 15 those appellate rights in his plea agreement?

16 MS. ZELL: Just the traditional waiver of
17 constitutional rights is in 11. There is no specific
18 appellate waiver in the plea agreement.

19 THE COURT: Okay. Because I usually have folks go
11:20:02 20 over those.

21 I may have said this to you before, but I would
22 rather err on the side of caution.

23 Do you understand that once it's decided what your
24 guideline range is, under some circumstances, Judge Maloney
11:20:22 25 could impose a sentence that is more severe or less severe

1 than that called for by the guideline?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. I imagine you and Miss

4 Nieuwenhuis have talked about what you hope your sentence

11:20:38 5 might be or what you hope it might be approximately, but do

6 you understand that if it is more severe than what you

7 expected or hoped, that that by itself is not a reason to

8 withdraw your plea?

9 THE DEFENDANT: Yes.

11:20:53 10 THE COURT: There is something called parole that

11 exists in the state system, that does not exist in the

12 federal system anymore. And if you're sentenced to a term

13 of custody, you can earn time off for good behavior, but you

14 will not be released early on parole. Do you understand

11:21:14 15 that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you also understand that once you

18 have pled guilty to a felony, that might impact certain

19 other valuable civil rights you have, such as the right to

11:21:31 20 vote, the right to hold public office, the right to serve on

21 a jury, and the right to possess a firearm?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. You have the right to plead not

24 guilty and to persist in that plea. You have the right to a

11:21:48 25 trial by a jury with the assistance of your attorney. You

1 have been given or would be given at least 30 days to
2 prepare for trial. You have the right to confront and cross
3 examine witnesses against you, and to call witnesses to
4 testify for you. And you have the right to have the Court
11:22:09 5 issue court orders called subpoenas, forcing witnesses to
6 come to the trial if you think they will have testimony that
7 is helpful to you. And you have the right to have your
8 attorney do all of those things at no charges to you.

9 You also have the right not to be compelled to
11:22:29 10 incriminate yourself, that's a different way of saying the
11 right to remain silent. What that means is the government
12 cannot force you to testify to prove its case against you,
13 and the government cannot say anything bad about you to
14 either the jury or the judge if you choose not to testify.
11:22:52 15 However, you have the right to testify at a trial if you
16 freely choose to do so.

17 You are presumed to be innocent of the charges
18 against you, and the government has the burden of proving
19 you guilty of each element of each charge beyond a
11:23:08 20 reasonable doubt.

21 Now, if you enter a guilty plea, there will be no
22 further trial of any kind. By entering this type of a plea,
23 you give up your right to a trial by a jury or a judge. You
24 give up your right against self incrimination, because I'll
11:23:27 25 be asking you what you did that makes you guilty. And you

1 give up your right to confront and cross examine witnesses
2 against you and to call witnesses to testify for you.

3 Now, at this time, do you have any question about
4 any of your rights as I have explained them to you or what
11:23:52 5 rights you'll be giving up?

6 THE DEFENDANT: No.

7 THE COURT: Any questions about the two crimes to
8 which you intend to plead guilty to today?

9 THE DEFENDANT: No.

11:24:00 10 THE COURT: Any questions about what penalties
11 could result from that?

12 THE DEFENDANT: No.

13 THE COURT: All right. Would you, Miss
14 Nieuwenhuis, you and your client--

11:24:12 15 MS. ZELL: Your Honor, if I may just briefly.

16 THE COURT: Yes.

17 MS. ZELL: Just to make sure that the defendant
18 knows that if-- he has charges pending in another case or
19 another case pending that a conviction in this case could
11:24:24 20 lead to revocation of supervised release in another case.

21 THE COURT: All right. Is he under supervision?

22 MS. ZELL: I believe that he may or may not have
23 been under supervision in another case, but just to make
24 sure the warning is out there that there was another federal
11:24:43 25 case, and I'm not sure if supervision ended or not.

1 THE COURT: What is your opinions, Miss
2 Nieuwenhuis?

3 MS. NIEUWENHUIS: I believe at the time that this
4 happened, I think he was --

11:24:53 5 You were already off?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Well, Miss Zell was just
8 exercising caution and wanted you to be aware of that, if
9 that was not the case, it could have impact on that case as
11:25:11 10 well.

11 MS. ZELL: All right. Thank you.

12 THE COURT: We would rather over inform than under
13 inform here.

14 Now, Miss Nieuwenhuis, would you and your client
11:25:24 15 please come up to the podium at this time?

16 MS. NIEUWENHUIS: Yes.

17 THE COURT: Is it your understanding, Miss
18 Nieuwenhuis, that at this time your client, Mr. Thomas, is
19 prepared to enter a plea to Counts One and Three of the
11:25:49 20 Indictment against him?

21 MS. NIEUWENHUIS: That is correct, your Honor.

22 THE COURT: And how do you plead to Count One,
23 Mr. Thomas?

24 THE DEFENDANT: Guilty.

11:25:57 25 THE COURT: And how about Count Three?

1 MS. NIEUWENHUIS: Guilty.

2 THE COURT: Have there been any force or threats
3 brought against you to get you to enter a guilty plea?

4 THE DEFENDANT: No.

11:26:08 5 THE COURT: Have there been any promises made to
6 you, other than the promises in the plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: After discussing it with your attorney,
9 did you conclude that pleading guilty pursuant to your plea
11:26:33 10 agreement is in your best interests?

11 THE DEFENDANT: Yes.

12 THE COURT: Is this a voluntary and free will act
13 on your part?

14 THE DEFENDANT: No.

11:26:42 15 THE COURT: Now, I'm going to ask Miss Zell to put
16 the pertinent portions of the plea agreement on the record.
17 I would ask you to listen carefully, Mr. Thomas, because
18 I'll be asking you if you think you've been promised
19 anything else, all right?

11:34:47 20 MS. ZELL: Thank you, your Honor.

21 As I do so, I'll refer specifically to Paragraph 6
22 in the plea agreement, which lays out the factual basis that
23 the government would prove if the case went to trial. And
24 those facts are that in the fall of 2015, the defendant
11:35:07 25 knowingly and voluntarily agreed with others in Michigan and

1 Illinois to participate in a scheme to fraudulently obtain
2 money that belonged to or was under the custody and control
3 of Bank of America, which is a federally insured financial
4 institution.

11:35:25 5 The Michigan aspect of the scheme involved
6 recruiting individuals to open the Bank of America accounts
7 or use existing accounts, and the defendant was one of those
8 recruiters.

9 In the defendant's participation of this scheme,
11:35:43 10 the scheme generally worked as follows and the defendant
11 understood this:

12 That one or more Michigan recruiters would identify
13 an individual who had or would open a Bank of America
14 account for use in the fraudulent scheme. Once that account
11:36:00 15 was opened, the defendant provided the account holders
16 personal identifiers to co-conspirators in and around
17 Chicago. One of those Chicago co-conspirators then
18 deposited a fraudulent check into the bank account using a
19 virtual teller machine in the Chicago area, and those
11:36:21 20 fraudulent checks falsely represented to Bank of America
21 that the payer -- the named payer on the check, usually a
22 business, made the check payable to the individual who had
23 recently opened or used their Bank of America account in the
24 scheme. After the deposit of the fraudulent checks into the
11:36:53 25 account holder's bank account, the defendant worked with

1 other recruiters to facilitate the withdrawal of those
2 fraudulently obtained funds from those account holder's bank
3 accounts.

4 In addition to actually accompanying recruiters and
11:37:12 5 account holders to Firekeepers Casino, in Calhoun County
6 Michigan, where account holders made fraudulent cash
7 advances from their bank accounts, the defendant also rented
8 vehicles to provide transportation for recruiters and
9 account holders, and those vehicles were used to travel to
11:37:33 10 casinos and banks throughout Michigan to conduct fraudulent
11 transactions.

12 After one of the account holders fraudulently
13 withdrew money as part of the scope, the defendant would
14 collect the money, divide it into varying amounts that would
11:37:48 15 go in part to the account holder, to the direct recruiter,
16 some for the defendant himself, and then some for the
17 Chicago co-conspirators.

18 And specifically, with respect to the execution
19 count, in Count Three, the defendant agrees that on November
11:38:07 20 30th, 2015, Co-Defendant Earl Lee Cobb, IV, used a Bank of
21 America virtual teller machine in Chicago to deposit a
22 fraudulent check in the amount of \$19,475.70 into
23 Co-Defendant Kevin Hunter's Bank of America account. Then
24 on December 1st, 2015, the defendant went to Firekeepers
11:38:43 25 Casino with Co-Defendants Nicholas Fry and Kevin Hunter for

1 the purpose of committing a fraudulent cash advance from
2 Hunter's Bank of America account. At around 4:30 a.m.,
3 Co-Defendant Fry accompanied Co-Defendant Hunter into the
4 casino. The defendant entered the casino separately around
11:39:02 5 the same time and waited for Fry and Hunter while Hunter
6 conducted a fraudulent cash advance transaction from his
7 Bank of America account, which resulted in a total
8 withdrawal from that account of \$9,951.

9 The defendant aided and abetted Co-Defendant
11:39:34 10 Hunter's execution of the bank fraud by coordinating with
11 Chicago co-conspirators to have a fraudulent check deposited
12 into Hunter's bank account so that Hunter could withdraw the
13 funds. And the defendant agrees that the cash advance
14 transaction that Hunter did on November 30th, 2015,
11:39:57 15 constituted a material misrepresentation to Bank of America
16 because Co-Defendant Hunter falsely claimed entitlement to
17 those funds that Co-Defendant Cobb deposited into the
18 account. The defendant acted with intent to defraud because
19 he knew that the money that Hunter withdrew from his account
11:40:17 20 did not belong to Hunter, to the defendant or to any of the
21 co-defendants, and that none of the co-defendants or the
22 defendant had any lawful right to the money.

23 THE COURT: Okay. Thank you, Miss Zell.

24 Now, if you would tell me in own words, Mr. Thomas,
11:40:36 25 what you did that makes you guilty of a conspiracy to

1 defraud the bank, and also at least one instance of
2 defrauding the bank.

3 THE DEFENDANT: I aided and abetted, drove to the
4 casinos, and helped get the money.

11:41:03 5 THE COURT: All right. And did you understand that
6 you-- had you agreed with at least one of the other
7 defendants to enter into an agreement to defraud the Bank of
8 America?

9 THE DEFENDANT: Yes.

11:41:17 10 THE COURT: And did you-- were the facts as stated
11 by Miss Zell intentionally correct?

12 THE DEFENDANT: Yes.

13 THE COURT: And Count Three was the count where you
14 were charged with actually committing a fraud, and did that
11:41:41 15 occur on or about December 1st, 2015, when you went with
16 Mr. Fry and Mr. Hunter?

17 THE DEFENDANT: Yes.

18 THE COURT: And did you know when you went with
19 them to the Firekeepers Casino that they intended to get a
11:42:01 20 cash advance from Mr. Hunter's account?

21 THE DEFENDANT: Yes.

22 THE COURT: And you knew that Mr. Hunter did not
23 have the right to that money?

24 THE DEFENDANT: Yes.

11:42:11 25 THE COURT: And did you wait for Mr. Fry and

1 Mr. Hunter while Mr. Hunter fraudulently obtained money from
2 his -- it was actually real money, but from his BOA account
3 resulting in a withdrawal of \$9,951?

4 THE DEFENDANT: Yes.

11:42:36 5 THE COURT: And were you to receive a cut of that
6 money?

7 THE DEFENDANT: Yes.

8 THE COURT: And was that for your assistance and
9 your agreement to be part of this conspiracy?

11:42:46 10 THE DEFENDANT: Yes.

11 THE COURT: All right. Miss Zell, anything
12 further--

13 Oh, Let me ask you one more question: Where was
14 the Firekeepers casino located?

11:42:56 15 THE DEFENDANT: Battle Creek.

16 THE COURT: Michigan?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Anything further, Miss Zell, you
19 want to ask the defendant to established a factual basis for
11:43:06 20 the plea?

21 MS. ZELL: No. Together with what is stated in the
22 plea agreement and what he has said here, I think there is
23 sufficient factual basis.

24 THE COURT: And how about you, Miss Nieuwenhuis?

11:43:16 25 MS. NIEUWENHUIS: I agree there is a sufficient

1 basis, your Honor.

2 THE COURT: All right. Okay. Miss Zell, I think
3 we missed a step here.

4 MS. ZELL: Yes.

11:43:41 5 THE COURT: Were you going to go over the other
6 portions of the plea agreement?

7 MS. ZELL: Okay. Thank you, your Honor.

8 Just the beginning of the plea agreement sets forth
9 the defendant's intention to plead guilty. Paragraph 2 lays
11:44:04 10 out the elements of the crimes, which the Court has covered
11 with the defendant, and we do have that correction in the
12 paragraph respecting Count Three, that we need to change it
13 where it says Count Two to Count Three.

14 Paragraph 3 outlines the penalties for these
11:44:24 15 counts, which the Court has covered with the defendant.

16 Paragraph 4 is restitution, again, which has been
17 covered by the Court.

18 Paragraph 5 relates to supervised release, which
19 the Court explained to the defendant.

11:44:41 20 Paragraph 6 is the factual basis for the plea,
21 which we just went through.

22 Paragraph 7 is that the government agrees that if
23 the defendant's offense level is 16 or greater, that the
24 government will move for the third point for acceptance of
11:45:04 25 responsibility consistent with the caveats in that

1 paragraph.

2 Paragraph 8 is the government agrees to dismiss all
3 of the other counts against the defendant that are in the
4 Indictment at the time of sentencing.

11:45:22 5 The sentencing guidelines are summarized and their
6 applicability in Paragraph 9.

7 Paragraph 10 just indicates that we have no
8 agreement about the final sentencing guidelines range.

9 Paragraph 11 states certain constitutional rights
11:45:41 10 that the defendant agrees to waive by entering a guilty
11 plea, which the Court has covered.

12 Paragraph 12 states that the defendant has agreed
13 not to go through the FOIA request process following his
14 guilty plea.

11:46:02 15 Paragraph 13 is that the Court is not a party to
16 the agreement, just that the written agreement is between
17 the defendant and the government, and it's up to the Court
18 whether or not it decides to accept it.

19 Paragraph 14 is that this agreement is limited to
11:46:22 20 United States, and particularly U.S. Attorney's office for
21 this district and the defendant.

22 Paragraph 15 are the consequences if the defendant
23 breaches any provisions of the agreement.

24 And 16 just reflects that there are no outside
11:46:55 25 agreements or promises that have been made to the defendant,

1 that everything is contained in the written agreement.

2 And Paragraph 17 just states the deadline for
3 acceptance, which in this case states November 28th, but the
4 U.S. Attorney's Office has chosen to accept the plea
11:47:16 5 agreement as it was executed by the parties on November
6 30th, 2017.

7 THE COURT: All right. Let me ask you, Miss
8 Nieuwenhuis, is there anything additionally that you want to
9 put on the record in terms of what the contents of the plea
11:47:34 10 agreement?

11 MS. NIEUWENHUIS: No, your Honor.

12 THE COURT: The only other thing I notice, and I
13 don't think you mentioned it, Miss Zell, unless I had a
14 little lapse, is that you will not oppose the defendant
11:47:49 15 seeking a two level reduction for acceptance of
16 responsibility.

17 MS. ZELL: That is correct, your Honor. And then
18 we will move-- yes, that is correct. We will not oppose
19 that and we will also move for the third point.

11:48:02 20 THE COURT: Okay.

21 MS. ZELL: Thank you.

22 THE COURT: Mr. Thomas, do you think you've been
23 promised anything else that has not been mentioned by Miss
24 Zell?

11:48:11 25 THE DEFENDANT: No.

1 THE COURT: And do you agree with all parts of your
2 agree agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had the chance to read that
11:48:19 5 and go over that carefully with Miss Nieuwenhuis?

6 THE DEFENDANT: Yes.

7 THE COURT: And when you signed it, do you think
8 you understood all of it?

9 THE DEFENDANT: Yes.

11:48:25 10 THE COURT: And do you think you understand it all
11 today?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. And it appears to me
14 Mr. Thomas, that you signed it on or about November 30th of
11:48:49 15 this year; is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: And Miss Nieuwenhuis, it appears that
18 you signed it on the same day?

19 MS. NIEUWENHUIS: Yes, that is correct.

11:48:56 20 THE COURT: And it also appears, Miss Zell, you
21 signed it on the same day?

22 MS. ZELL: Yes, that is correct.

23 THE COURT: I also note that it was filed on the
24 same day, and that would be November 30th of 2017.

11:49:14 25 So I lost track of where I was, but I was-- I find

1 that you're-- I'm going to make a report and recommendation
2 to Judge Maloney that he accept your plea and adjudicate you
3 guilty. I find that your plea is made knowingly, and that
4 you understand each of your rights that I have explained to
11:49:38 5 you, and that it's voluntary and free from any force,
6 threats, or promises, apart from your plea agreement. And
7 that you understand what the charges are against you and the
8 penalties provided by law. And finally, I do find the plea
9 has a sufficient factual basis.

11:50:00 10 I would expect the next thing that will happen in
11 your case is you will have a presentence interview at which
12 your attorney may be present, and Judge Maloney will decide
13 whether or not to accept your plea agreement after he has
14 had a chance to review your presentence report.

11:50:23 15 As I understand it, you are currently released on
16 bond; is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: And I'm going to caution you, just as I
19 do every defendant. Once you've entered a plea and you're
11:50:37 20 awaiting sentencing, sometimes that is a very tense time for
21 people. And sometimes people go off the rails. And I have
22 heard of no bond violations by you, but if you have a bond
23 violation, you could jeopardize or harm one of the biggest
24 benefits you get from your plea agreement, and that is a
11:51:04 25 reduction in your sentencing guidelines. So you want to

1 make sure that whatever you do to relieve any tension you
2 have, it's not something that you're forbidden to do under
3 your bond. Okay?

4 THE DEFENDANT: Yes.

11:51:19 5 THE COURT: All right. Do you have any questions
6 you would like to ask me, sir?

7 THE DEFENDANT: No.

8 THE COURT: I wish you good luck.

9 Miss Nieuwenhuis, anything further?

11:51:27 10 MS. NIEUWENHUIS: No, your Honor. Thank you.

11 THE COURT: And how about you, Miss Zell?

12 MS. ZELL: No, thank you, your Honor.

13 THE COURT: All right. This matter is adjourned.

14 Good day to all of you.

11:51:35 15 COURT CLERK: All rise, please.

16 Court is adjourned.

17 (At 3:31 p.m., proceedings concluded.)
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C E R T I F I C A T E

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/

Kathleen S. Thomas, CSR-1300, RPR
U.S. District Court Reporter
410 West Michigan
Kalamazoo, Michigan 49007